Supreme Court, U.S.
FILED

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NO. _____

IN THE
Supreme Court of the United States

OCTOBER TERM, 1996

BOB MATYASTIK,
Petitioner,

vs.

STATE OF TEXAS,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS

PETITION FOR WRIT OF CERTIORARI

BOB MATYASTIK, *pro se*
310 S. Crockett
Cameron, Texas 76520
(817) 697 6585

May 21, 1996

29pp

QUESTIONS PRESENTED

1. Is is a violation of due process of law as protected by the 5th and 14th Amendments to the United States Constitution, for the state courts to deny statutory rights for the disqualification of the state judge who is specially assigned to hear a case?

2. Is it a violation of due process of law as protected by the 5th and 14th Amendments to the United States Constitution for the state court to fail to give notice of the assignment of a judge to hear a case when time is not a factor, nor are there a large number of counselors involved?

3. Is it a violation of due process of law as protected by the 5th and 14th Amendments to the United States Constitution for the County Court of a State to file a motion to assign a judge under one section of the state government code and the State Court of the same State to file a motion to assign the same judge to the same cases under a different section of the state government code?

4. Is it a violation of due process of law as protected by the 5th and 14th Amendments to the United States Constitution for there to be two different assignments of the same judge to hear the same cases by two different authorities (one County, one State), where one of these assignments is communicated to the counsel of record by certified mail, and the other assignment (the one that is, in fact, the effective assignment) is not communicated to the counsel of record?

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OPINIONS BELOW

The opinion of the Third Court of Appeals of Texas appears in Appendix to the petition and is unpublished. See Appendix.

The Texas Supreme Court denied application for writ of error.

JURISDICTIONAL STATEMENT

The Texas Supreme Court denied writ on January 11, 1996. A copy of that denial appears in Appendix.

The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257(a). and 42 U.S.C. Sec. 1983.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

THE UNITED STATES CONSTITUTION, FIFTH AMENDMENT

No person shall be.....deprived of life, liberty, or property, without due process of law; ...

UNITED STATES CONSTITUTION, FOURTEENTH AMENDMENT

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

TEXAS GOVERNMENT CODE, ARTICLE 26.022

(a) The county judge for good cause may at any time appoint a special judge with respect to any pending civil or criminal matter.

(b) The, special judge may be appointed on motion of the court or on motion of any counsel of record in the matter. Each counsel of record is entitled to notice and hearing on the matter.

(c) To be appointed a special judge, a person must be:

(1) a licensed attorney; and

(2) agreed on by the counsels of record, if the counsels are able to agree.

(d) The motion for appointment and the order appointing the special judge shall be noted on the docket. A written motion or order may be filed among the papers of the case.

(e) The special judge has the powers of the county judge in relation to the matter involved.

TEXAS GOVERNMENT CODE, ARTICLE 74.053

(a) When a judge is assigned under this chapter the presiding judge shall, if it is reasonable and practicable and if time permits, give notice of the assignment to each attorney representing a party to the case that is to be heard in whole or part by the assigned judge.

(b) If a party to a civil case files a timely objection to the assignment, the judge is disqualified to hear the case.

(c) An objection under this section must be filed before the first hearing or trial, including pretrial hearings, over which the assigned judge is to preside.

TEXAS GOVERNMENT CODE, ARTICLE 74.056

a) A presiding judge from time to time shall assign the judges of the administrative region to hold special or regular terms of court in any county of the administrative region to try cases and dispose of accumulated business.

b) The presiding judge of one administrative region may request the presiding judge of another administrative region to furnish judges to aid in the disposition of litigation pending in a county in the administrative region of the presiding judge who makes the request.

c) The presiding judge of an administrative region may appoint a judge in the region to serve as acting presiding judge in the absence of the presiding judge. An acting presiding judge has all the rights, duties, and powers of the presiding judge.

d) In addition to an assignment under Sections 74.003, 75.002, and 75.003, the chief justice of the supreme court may assign a retiree or a former judge whose last judicial office before retirement was justice or judge of the supreme court, the court of criminal appeals, or a court of appeals to the administrative judicial region in which the retiree or former judge resides for reassignment by the presiding judge of that region to a district or statutory county court in the region. The reassignment by a presiding judge is subject to the requirements of Section 74.055. The assignment of a retiree or former judge by the chief justice to the administrative region continues only during the period for which the retiree or former judge has certified a willingness to serve under Section 74.0551.

STATEMENT OF THE CASE

History

There is a long-standing history of interaction between the Petitioner, Mr. Bob Matyastik, and the Judge for this case questioned in this writ, Mr. Charles E. Lance.

In 1988, Jane Matyastik, sister of the Petitioner, was charged with speeding and failure to provide child restraint. The Petitioner held the surety on both cases, and Mr. Charles Lance served as the Counsel for the State. The Defendent was found guilty, and a consolidated trial ensued some time later, in January 1993, for bond forfeitures against the Petitioner (Causes No. 7309 and 7310). At that time, Mr. Lance was appointed the trial judge, to which Mr. Matyastik objected, based on the fact that he had subpoenaed Mr. Lance as a witness and that he had been the counsel for the State in the original trial. Mr. Lance did serve as trial judge, and the trial ended with the Petitioner being found guilty, ordered to pay bond forfeiture fees, and was found guilty of two counts of contempt of court, paid a fine of $100.00 and served three days in jail.

Immediately prior to this case, in November of 1992, a hearing was held to adjudicate a Motion for Remittitur, Motions for Sanctions and a Settlement Agreement on three bail bond forfeitures (No. 23,088, *State of Texas vs Phillips-England-Posival*). The Defendent was Bob Matyastik, the Plaintiff was Mr. Hollis Lewis, County-District Attorney, Milam County, and the Judge was Charles E. Lance. All three were settled for a percentage of the monies owing for the bond forfeiture, plus court costs and sanction fees. The court also awarded attorney's fees to be paid by the Defendent, to which the Defendent objected.

These two cases formed the basis of a less than sterling relationship between the Petitioner, Bob Matyastik, and Judge Charles Lance.

Current Case

On October, 19, 1993, Roger Hashem, Constitutional County Judge, Milam County, Texas, recused himself as judge and submitted a document entitled "SUA SPONTE MOTION AND ORDER" (see Appendix, page A-7) where he appointed District Judge Charles E. Lance to serve as County Judge, Pro Tempore, of Milam County, for the purposes of adjudicating eight cases of bail bond forfeiture, Cause Nos. 7419, 7405, 7420, 7406, 7723, 7430, 7428, and 7429. On each of the cases, the Defendent was Bob Matyastik. This motion and order were mailed by certified mail, return receipt requested to the counsel of record in accordance with Section 26.022 of the Government Code of the State of Texas, and both parties were notified of entitlement to hearing.

On the same day, October 19, 1993, an "ORDER OF ASSIGNMENT BY THE PRESIDING JUDGE" (see Appendix, page A-8) was made by B.B. Schraub, Presiding Judge, Third Administrative Judicial Region. This assignment appointed Charles E. Lance as an ACTIVE Judge of the 20th District Court, and assigned him to the County Court of Milam County to complete all trial proceedings growing out of Cause Nos. 7419, 7405, 7420, 7406, 7723, 7430, 7428, and 7429. This Order of Assignment was made pursuant to Section 74.056, Texas Government Code. It stated in the Order that it was not reasonable or practicable to give notice of this assignment to each attorney, and that time did not permit. The trial was to be held on November 29, 1993, (later changed to December 6, 1993) six weeks in the future. Instead, this Order of Assignment was ordered to be posted "in a prominent place in the public area of the (County) Clerk's office...(and that) ...this posting shall constitute 'Notice of Assignment' as required by Section 74.053."

The Petitioner is a bail bondsman, whose office is not located in the County Courthouse. Since one assignment had already been made by Judge Hashem, there was no reason for the Petitioner to be searching for a second assignment, made by a different judge, a

different judicial authority, and pursuant to a different government code. Under these circumstances, the failure to notify each counsel of record and to elect to "post the information," with six weeks remaining to the trial date, could be misconstrued as somewhat deceptive, given the widely known antagonistic relationship that existed between the Petitioner and Judge Lance.

The Petitioner would ask the Court to observe that Cameron, Texas, is a small town in a rural setting, where anonymity is neither likely nor possible.

Following receipt of the Motion and Order to assign Judge Lance as the trial judge by Judge Hashem, sent certified mail, the Petitioner began preparation of his objections and his request for a hearing regarding Judge Lance as the trial judge. Mr. Matyastik received a letter from Judge Hashem, County Judge, Milam County (see Appendix, page A-10) indicating that a hearing would be held on his objections to the Motion and Order Appointing Judge Lance as a County Judge, Pro Tempore on November 29, 1993 at 9:00 a.m.

On November 23, 1993, Hollis C. Lewis, Jr., County and District Attorney, Milam County, Texas, filed a Motion of Consolidated Trial. The cases requested were the eight cases assigned to Judge Lance for trial, all with the same defendant, Bob Matyastik, and all eight cases, as evident from the pleadings, were for forfeiture of bonds. These cases were Cause Nos. 7419, 7405, 7420, 7406, 7423, 7430, 7428, and 7429. The request for consolidation of the cases was for trial purposes, by reason that a joint trial would avoid delay, eliminate repetition of testimony, and avoid unnecessary costs and expenses. It was requested that the causes be consolidated for trial, but that each would remain separate and distinct for all other purposes, with separate judgments to be rendered in each case. A hearing for the Plaintiff's Motion for Consolidation was set for 11:00 a.m. on November 29, 1993, in the County Courtroom, Milam County, Texas.

On November 29, 1993, Bob Matyastik entered an Objection to Appointment of Judge Charles E. Lance from adjudicating the eight cases of bail bond forfeiture (Cause Nos. 7419, 7405, 7420, 7406, 7723, 7430, 7428, and 7429) stating that:

1) Judge Lance was subject to be called as a witness.

2) Judge Lance was on the bench in November 1992, when an agreement was made between the State of Texas and the Petitioner, Bob Matyastik, concerning the settlement of Mr. Matyastik's bail bond forfeitures.

This objection, made in accordance with Section 26.022 of the Texas Government Code, was filed for record at 8:15 a.m., on the 19th day of November, 1993, by the Petitioner, at the County Clerk's Office, Milam County, Texas.

Further to this "Objection to Appointment, the Petitioner also prepared a "Motion to Recuse the Honorable Charles E. Lance," (see Appendix, page A-11) stating that:

1) Judge Lance presided over previous trials of bail bond forfeitures against Mr. Matyastik (November 1992 and January 1993), sanctioning him and awarding attorney's fees to the State of Texas.

2) Due to Judge Lance's involvement in a previous trial for bond forfeitures and settlement, Mr. Matyastik was inclined to call Judge Lance as a witness in the pending trial of eight bail bond forfeiture cases (see numbers above), which would make him ineligible to serve in a judicial capacity.

3) Mr. Matyastik questioned Judge Lance's appointment to the position of County Judge and felt that this appointment did not meet the provision of U.S. Government Code, Art. 26.022.

4) Mr. Matyastik felt that in previous adjudications, Judge Lance had formed a negative opinion of him (Mr. Matyastik) and that this would preclude Mr. Matyastik receiving fair and impartial treatment and due process of law.

This Motion to Recuse Judge Lance was based, not on Section 74, but on Section 26 of the Texas Government Code, the only assignment that the Petitioner had been made aware of by the Court. This Motion was presented to the County Attorney at 4:50 p.m. on November 29, 1993. This Motion was denied due to the fact that a Motion for Consolidated Trial concerning these eight cases had been held at 11:00 a.m. on this same day. Texas Gov. Code Ann. 74.053(b), which outlines the rules under which a party may object to the assignment of a judge, indicates that the objection must be filed prior to the first hearing, including any pretrial hearings.

The Texas Court of Appeals, Third District in Austin, Texas, confirmed Judge Lance's authority as presiding judge in the eight cases of bond forfeiture, declining Mr. Matyastik's Motion for Recusion (see Appendix, page A-10), May 24, 1995. In its deliberations, the Appellate Court ruled that since the order of assignment pursuant to Section 26 was contingent upon further hearings, this assignment could not take effect until those hearings had been completed. The assignment pursuant to Section 74, however, was effective immediately, therefore, the assignment of Judge Lance to hear these causes was effective under Section 74, not Section 26.

The Petitioner filed a timely objection to the appointment pursuant to Section 26, and was awarded a hearing date, which he attended and submitted a "Motion to Recuse Judge Charles Lance." However, this motion to recuse was based on Section 26, not Section 74, of which he was unaware. Since the appointment of Judge Lance was effective based on Section 74, and since the Petitioner was responding only to the appointment based on Section 26, the motion of appointment was upheld.

By choosing to post the "Order of Assignment" pursuant to Section 74.056, rather than notify both counsels of record, the legal system, while within the "letter of the law" may have acted to confuse, by omission, a citizen who was known to be acting *Pro se* and who did not have the benefit of legal training. Since our system of judicial review allows for self-representation, the citizen who elects to represent himself should be assured of fair, impartial and ethical treatment on behalf of the plaintiff and the court.

REASONS FOR GRANTING THE PETITION

The Petitioner has demonstrated that the history between himself and Judge Lance, based on several past court trials involving the Petitioner and Judge Lance, was sufficient in itself to cast doubt on the neutrality that the Petitioner could expect from this trial judge.

Judge Lance held the Petitioner in contempt of court during a previous trial. The Supreme Court of the United States has prohibited the trial of a defendant before a judge who had previously held the defendant in contempt (*Taylor vs. Hayes*, 418 U.S. 488, 94 S.Ct. 2697, 41 L. Ed., 2D 897 (1974).

The Due Process Clause entitles a person to an impartial and disinterested tribunal. Neutrality is required in court proceedings to safeguard procedural due process and prevent judgments based on any other information beyond that presented in the present trial. (*Carey vs Piphus*, 435 U.S. 247, 259-262, 266-267; 98 S. Ct. 1042, 1043, 55 L. Ed. 2D 252 (1978). The neutrality required guarantees that life, liberty, or property will not be taken on the basis of an erroneous and distorted concept of fact or law (*Mathews vs Eldridge* 424 U.S. 319, 344; 96 S. Ct. 893, 907; 45 L. Ed, 2d 18 (1976).

In essence, the Petitioner was effectively denied information critical to the pursuance of what he felt to be a fair trial. There were two different assignments of Judge Lance to the position of trial judge for these causes, by two different judges, under two

different sections of the Texas Government Code. One of these was sent to the Petitioner by certified mail, and one was not.

It was well known by the Court that the Petitioner was not an attorney, and that he was acting *Pro se*. Since the trial of all eight cases involved only the County Attorney as the Plaintiff and the Petitioner as the Defendent, and since there was plenty of time between the assignment by Judge Schraub on October 19, 1993, and the trial on November 29, 1993, (later changed to December 6, 1993) the court's decision to post this assignment rather than mail the Petitioner a copy has to border on suspect.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,
/s/Bob Matyastik, *pro se*

Dated: May 21, 1996

Appendix

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-94-00163-CV
NO. 03-94-00164-CV
NO. 03-94-00165-CV
NO. 03-94-00166-CV
NO. 03-94-00167-CV
NO. 03-94-00168-CV
NO. 03-94-00174-CV
NO. 03-94-00175-CV

Bob Matyastik, Appellant

v.

State of Texas, Appellee

FROM THE COUNTY COURT OF MILAM COUNTY
NOS. 7405, 7406, 7419, 7428, 7420 7423, 7429 & 7430
HONORABLE CHARLES E. LANCE, JUDGE PRESIDING

PIER CURIAM

Appellant Bob Matyastik appeals eight trial-court judgments awarding appellee State of Texas recovery on forfeited bail bonds on which Matyastik was the surety.[1] Having granted Matyastik's

[1] The cause numbers on appeal correspond to the trial-court cause numbers as follows: our cause number 3-94-163-CV is the appeal from trial-court cause number 7405, 3-94-164-CV is from 7406, 3-94-165-CV is from 7419, 3-94-166-CV is from 7428, 3-94-167-CV is from 7420) 3-94-168-CV is from 7423,; 3-94-174-CV is from 7429, and 3-94-175-CV is from 7430.

amended motion to consolidate the causes for consideration on appeal, we will consider the eight causes jointly. We will affirm the trial court's judgments.

In point of error one, Matyastik argues that the trial court erred by ignoring the statutory requirements for appointing a judge to hear his causes. Tex. Gov't Code Ann. § 26.022, 74.053 (West 1988 & Supp. 1995). The Honorable Charles Lance presided over the causes in the place of the Honorable Roger Hashem, judge of the constitutional county court of Milam County.

The transcripts contain two documents assigning Judge Lance to the county court of Milam County. The first document, titled "Sua Sponte Motion and Order," is signed by Judge Hashem and appoints Judge Lance as County Judge Pro Tempore under section 26.022 of the Government Code. This document was filed on October 19, 1993, and informs the parties that they are entitled to a hearing on the appointment.

The second document is an order of assignment by the Presiding Judge of the Third Administrative Judicial Region, the Honorable B. B. Schraub[2]. Judge Schraub's order assigns Judge Lance to the county court of Milam County to hear the eight causes now on appeal, beginning on October 19, 1993, and continuing until the causes are completed. This assignment was made under section 74.056 of the Government Code.

We first address which of the two orders controls these causes. By its terms, the assignment made under chapter seventy-four took effect on October 19. The motion and order appointing Judge Lance under chapter twenty-six, although filed on October 19, contemplated a future hearing on the matter. Chapter twenty-six,

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[2] The transcript in cause number 3-94-175-CV, the appeal from trial-court cause number 7430, does not contain Judge Schraub's order of assignment. Judge Schraub signed only one order, however, which included all eight cause numbers and assigned all eight causes to Judge Lance. Because the transcripts clearly show that Judge Schraub assigned cause number 7430 to Judge Lance, we will proceed without requesting that the record be supplemented in cause number 3-94-175-CV.

moreover, mandated further proceedings to complete the appointment: the provisions of that chapter require counsel of record to agree, if they can, on the appointee; add the county judge must consider the recommendations of attorneys of the court in making the appointment. Tex. Gov't Code Ann. § 26.022(c), .028 (West 1988). Judge Hashem's unilateral motion and order were not effective until counsel were given a chance to participate. *See Saylors v. State,* 836 S.W,2d 7690 772-73 (Tex. App.-Waco 1992, pet. ref'd). An assignment under chapter 74, by contrast, is effective immediately, subject to a party's option to object. The order under chapter seventy-four, which became effective before the order under chapter twenty-six, is the order that governs these causes. We next consider whether the assignment under chapter seventy-four was valid. If a party to a civil case timely objects to the assignment, the judge cannot hear the case. Tex. Gov't Code Ann. § 74.053(b) (West Supp. 1995). The objection is timely if filed before the first hearing, including pretrial hearings, or trial over which the assigned judge is to preside. Tex. Gov't Code Ann..§ 74.053(c) (West Supp. 1995). Matyastik objected in writing to "the motion and order appointing Judge Lance as County Judge, Pro Tempore, of Milam County.[3]" Matyastik specified that he was objecting under section 26.022 of the Government Code.

Because Matyastik objected only on the basis of chapter twenty-six, his objection was ineffective as to the order assigning Judge Lance under chapter seventy-four. *See Cabrera v. Cedarapids Inc.,* 834 S.W.2d 615, 617-18 (Tex. App.-Houston [14th Dist.] 1992, writ denied); *Meuth v. Hartgrove,* 811 S.W.2d 626, 628 (Tex. App.-Austin 1990, no writ) (objection based on chapter seventy-four was ineffective against assignment made by county administrative judge).

Matyastik also moved to recuse Judge Lance by a motion filed at 4:50 p.m. on November 29. On the same day, however, Judge Lance heard the State's motion to consolidate the causes for trial

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[3] In making this determination, we do not consider as controlling Judge Lance's signature on the judgment as "Judge Presiding, County Judge Pro Tem."

and signed an order of consolidation. The provisions for objecting to an assignment under chapter seventy-four are mandatory. *Logic Sciences, Inc. v. Smith,* 798 S.W.2d 394, 395 (Tex. App.-Houston [1st Dist.] 1990, no writ). A pretrial hearing, before which time an objection must be lodged, is broadly construed. *E.g., Money v. Jones, 766* S.W.2d 307, 308 (Tex. App.-Dallas 1989, writ denied) (hearing on motion to continue was a pretrial hearing). Matyastik has not shown that he complied with section 74.053(c) by filing his objection before Judge Lance conducted the first pretrial hearing. We determine that the assignment of Judge Lance was valid under chapter seventy-four of the Government Code, and we accordingly overrule point one.

Based on this ruling, we also overrule point of error two, in which Matyastik asserts that the trial court erred in presiding over the causes when he was disqualified.

In his third point of error, Matyastik argues that the trial court erred in consolidating the causes. The trial court ordered that the eight causes be tried together and consolidated for trial only, that separate verdicts be given and separate judgments rendered in each action, and that the causes remain as separate actions on the court's docket for all purposes other than trial.

The trial court has broad discretion to consolidate causes pursuant to Texas Rule of Civil Procedure 174. *Cherokee Water Co. v. Forderhause,* 641 S.W.2d 522, 525 (Tex. *1982); Allison v. Arkansas La. Gas Co.,* 624 S.W.2d 566, 568 (Tex. 1981). The trial court's ruling on consolidation will not be reversed absent an abuse of discretion that prejudices the opposing party. *Lone Star Ford, Inc. it. McCormick,* 838 S.W.2d .734, 738 (Tex. App.-Houston [1st Dist.] 1992, writ denied). Prejudice to a party cannot be presumed, but must be demonstrated. The complaining party must show that he exercised reasonable diligence to avoid or prevent the harm by opposing the order for consolidation. Id.

No statements of facts have been filed in these appeals. In the absence of a statement of facts, Matyastik cannot establish that the

trial court abused its discretion to his prejudice. *Walker v. Packer,* 827 S.W.2d 833, 837 (Tex. 1992). This Court will presume that the evidence was adequate to support the trial court's decision. *Simon v. York Crane & Rigging Co.*, 739 S.W.2d 793, 794-95 (Tex. 1987). We overrule point three.

In point of error four, Matyastik contends that the trial court erred in granting the State's motion in limine. Reversible error occurs not in the cyrant of a motion in limine, but in the subsequent exclusion of relevant evidence. *Johnson v. Garza,* 884 S.W.2d 831, 834 (Tex. App.-Austin 1994, writ denied); *see Hartford Accident & Indem. Co. v. McCardell, 369* S.W.2d 331, 335 (Tex. 1963); *Meuth,* 811 S.W.2d at 628. Because Matyastik has failed to assert an error on which reversal can be predicated, we overrule point four.

In point of error five, Matyastik claims that the trial court erred in denying his motion for remittitur. In point six, Matyastik argues that the trial court erred in hearing the causes when no liability existed on the bonds. Addressing these contentions requires a statement of facts, which Matyastik has failed to provide. Without a statement of facts, this Court presumes that all rulings at trial were correct and that sufficient evidence was introduced to support the judgment. *Murray v. Devco, Ltd.,* 731 S.W.2d 555, 557 (Tex. 1987); *Guthrie v. National Homes Corp.,* 394 S.W.2d 494, 495 (Tex. 1965). We overrule points five and six.

We affirm the judgments of the trial court.

Before Chief Justice Carroll, Justices Powers and B. A. Smith
Affirmed
Filed: May 24, 1995
Do Not Publish

Cause Nos. 7419
7405
7420
7406
7423
7430
7428
7429

THE STATE OF TEXAS IN THE COUNTY COURT

VS. OF

BOB MATYASTIK, ET AL MILAM COUNTY, TEXAS

SUA SPONTE MOTION AND ORDER

I, Roger Hashem, Constitutional County Judge of Milam County, on my own Motion, for good cause do hereby appoint District Judge Charles E. Lance as County Judge, Pro Tempore, of Milam County, Texas, to serve in such capacity in the above styled and numbered cases.

A copy of this Motion and Order shall be mailed by certified mail, return receipt requested to counsel of record and shall serve as notice in accordance with Section 26.022 of the Government Code of the State of Texas, and shall be filed among the papers of said causes and noted in the docket in said cases. The parties are notified that they are entitled to a hearing on this matter.

/s/ Roger Hashem
County Judge
Milam County, Texas

Filed For Record
3:30 o'clock P.M.
19 day of October, 1993
La Verne Soefje, County Clerk
Milam County, Texas
By /s/Barbara Vansa, Deputy

Receipt of Certified Mail:
Sent to Mr. Bob Matyastik
310 S. Crockett
Cameron, Texas 76520
Dated October 2, 1993
Date of Delivery: 10-21-93

THE STATE OF TEXAS
THIRD ADMINISTRATIVE JUDICIAL REGION
ORDER OF ASSIGNMENT BY THE PRESIDING JUDGE
Pursuant to Section 74.056, Texas Government Code

On the 19th day of October, 1993.
The Honorable Charles E. Lance
Active Judge of the 20th District Court
was assigned to County Court of Milam County, Texas RE: Cause numbers 7405, 7406, 7419, 7420, 7423, 7428, 7429, 7430 The State of Texas vs. Bob Matyastik.

This assignment will begin on the 19th day of October, 1993 and will continue for the period of time that may be deemed necessary for the assigned Judge to complete trial of any case or cases begun during this period, and to pass on motions for new trail and all other matters growing out of cases tried by the Judge herein assigned during this period.

It is not reasonable or practicable to give notice of this assignment to each attorney representing parties to cases likely to be heard in whole or in part by the assigned Judge; and under the circumstances time does not permit the giving of such notices.

The County Clerk of Milam County, Texas is ordered, upon receipt hereof, to post a copy of this order in a prominent place in the public area of the Clerk's Office. This posting shall constitute "Notice of Assignment" as required by Section 74.053.

Ordered this 19th day of October, 1993.

/s/B. B. Schraub
Presiding Judge
Third Administrative Judicial Region

Attest:
/s/Dianne Gannaway
Administrative Assistant

Filed For Record
8 o'clock A. M.
28 day of October, 1993
La Verne Soefje
County Clerk, Milam County, Texas
By /s/Trish Vargas, Deputy

Cause Nos. 7419
7405
7420
7406
7423
7430
7428
7429

STATE OF TEXAS
VS.
BOB MATYASTIK, ET AL

COUNTY COURT
OF
MILAM COUNTY, TEXAS

OBJECTION TO APPOINTMENT

Comes Now Bob Matyastik, and object to the motion and order appointing Judge Lance as County Judge, Pro Tempore, of Milam County, Texas, in the above numbered cases, and will show the following:

1. Charles Lance is subject to be called as a witness.
2. Judge Charles Lance was on the bench 11-3-1992 when an agreement was made between the State and Bob Matyastik concerning the settlement of Bob Matyastik's bail bond forfeitures.
3. This objection is made in accord with Sec. 26.022 of the Government Code of the State of Texas. Therefore Bob Matyastik disagrees to this appointment, and requests a hearing if necessary.

Respectfully submitted,
/s/Bob Matyastik, *Pro Se*
310 S. Crockett
Cameron, Texas 76520

cc:
Charles Lance
Hollis Lewis
Roger Hashem

Filed For Record
8:15 o'clock A. M.
19 day of November, 1993
La Verne Soefje, County Clerk,
Milam County, Texas
By /s/ Helen Hrozek, Deputy

Milam County Courthouse
Cameron, Texas 76520
Phone (817) 697-3581
November 22, 1993

Chambers of
Roger Hashem
County Judge

Mr. Bob Matyastik:

In accordance with Sec. 26.022 of the Government Code of the State of Texas, a hearing will be held on your objections to the Motion and Order Appointing Judge Lance as County Judge, Pro Tempore, of Milam County, Texas in the following numbered and styled causes:

THE STATE OF TEXAS	COUNTY COURT
VS.	OF
BOB MATYASTIK, ET AL	MILAM COUNTY, TEXAS

Causes Nos. 7419
7405
7420
7406
7423
7430
7428
7429

The hearing will be held on the 29th day of November at 9:00 a.m. in the Milam County Courtroom in the Milam County Courthouse, Cameron, Texas.

/s/Roger Hashem
Milam County, Judge

RH:dl

cc: Hollis Lewis, County/District Attorney
Charles Lance, District Judge

No. 7405
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THE STATE OF TEXAS IN THE COUNTY COURT

VS. OF

BOB MATYASTIK MILAM COUNTY, TEXAS

DEFENDANT'S MOTION TO RECUSE THE HONORABLE CHARLES E. LANCE TO THE HONORABLE JUDGE OF SAID COURT:

Comes now defendant Bob Matyastik and files this his motion to recuse the Honorable Charles E. Lance and in support thereof shows the Court as follows:

I.

Judge Lance presided over the trial of bail bond forfeitures against the defendant in November, 1992, and in January, 1993. (No. 7309 & 7310, County Court, Milam County, Texas.)

In the trial in November, 1992, Judge Lance sanctioned defendant and awarded attorney's fees to the State of Texas. This was done by Judge Lance in violation of the law in No. 23,088, *State of Texas vs. Phillips, et al*, District Court, Milam County, Texas.

In both of the aforesaid trials against the defendant, Judge Lance denied defendant due process of law, a fair trial and his rights as provided by law.

On January 22, 1993, Judge Lance who presides as the District Judge of the 20th District Court of Milam County, Texas, attempted to preside as County Judge of Milam County, Texas, in Cause No. 7309 and 7310, which were styled The State of Texas vs. Bob Matyastik, et al.

Judge Lance is not the County Judge of Milam County, Texas, and he attempted to preside as such in violation of the provisions of the Government Code, Art. 26.022. He denied movant due process of law and a fair trial, and his rights under the law.

The award of attorney's fees in a bail bond forfeiture is not provided by law, and the case law forbids such an award of attorney's fees. (No. 23,088, *St. Tx. v. Phillips, et al, supra.*)

Judge Lance was not appointed according to the provisions of the Government Code, art. 22.022, to preside as County Judge of Milam County, Texas. His attempted appointment in the instant case violates the provisions of the GOVT. CODE, Art. 26.022.

During the trial of Causes No. 7309 and 7310 in the County Court of Milam County, Texas, Judge Lance who was purportedly acting as the County Judge of Milam County, Texas, held defendant Bob Matyastik in contempt of Court; and defendant was required to serve two days in the Milam County, Texas, jail and to pay a fine of $100.00. Judge Lance denied defendant due process of law.

II.

During the trial against defendant in November, 1992, during which defendant was ordered to pay attorney's fees to the State of Texas and during which defendant was denied due process of law, Judge Lance approved an agreement for the State of Texas to settle the bail bond forfeitures against defendant. (No. 23,088, *supra.*)

Judge Lance did not require the State of Texas to keep its agreement with defendant in No. 7309 and 7310, *supra*, and he ordered defendant to pay attorney's fees to the State of Texas which

are not provided by law and which the appellate courts have held cannot be collected by the State of Texas (No. 23,088, *supra*).

Judge Lance has wrongfully confined Bob Matyastik in the Milam County Jail in Cameron, Texas, and the Court of Criminal Appeals had to intervene for defendant to be released. Lance made false and slanderous statement about movant to the Court of Criminal Appeals. Lance called movant a "Hard headed Bohemian."

III.

Judge Lance made a response to defendant's application for habeas corpus that contained false statements against defendant to try to explain the wrongful actions that he ordered against defendant when Judge Lance was trying to act as the Milam County - County Judge. Movant has a case for false arrest pending against Lance (No. 23,619, Dist. Ct., Milam Co., Tx.).

IV.

Pursuant to the Texas Rules of Civil Procedure Rule 13b(2), "Judges shall recuse themselves in all proceedings in which their impartiality might reasonably be questioned..."

V.

Defendant would show that Judge Lance conspired with the County Judge of Milam County of Milam County, Texas, and with the County Attorney of Milam County, Texas, to deny defendant due process of law. This was done to deny defendant the protection of the law in the Government Code, Art. 26.022.

Defendant would show that Judge Lance is a former army buddy of the County Attorney of Milam County, Texas, who was not a resident of Milam County, Texas; and Judge Lance participated in the selection of Hollis Lewis as the County Attorney of Milam County, Texas. Judge Lance recommended Hollis Lewis to the commissioners of Milam County, Texas, for selection as County Attorney; and Hollis Lewis was not a resident of Milam

County, Texas, nor a registered voter in Milam County, Texas, when Judge Lance was involved in the political selection of Hollis Lewis as the County Attorney of Milam County, Texas. This violated the judicial cannons. This was a conspiracy to violate the civil right of the movant by soliciting for a County Attorney who did not reside in the County.

VI.

Defendant would show that the County Attorney of Milam County, Texas, has employed the daughter of Judge Lance in the office of the County Attorney of Milam County, Texas.

VII.

Recusal is appropriate to protect the fragile appearance of justice when the challenged judge has previously enteres (sic) sanctions and orders beyond the scope of his authority.

It is warranted here where the judge's dislike of defendant may have affected rulings on the merits of the case and resulted in the imposition of sanctions against defendant, even though there existed no foundation whatsoever for such sanctions. Defendant submits that the sanctions and actions by Judge Lance against defendant warrant his recusal, because his actions exceeded Judge Lance's statutory or constitutional authority.

VIII.

If Judge Lance refuses to recuse himself, defendant invokes his right under Rule 18a(c) of the Texas Rules of Civil Procedure to have a hearing before either the presiding judge of this administrative judicial district or wome (sic) other disinterested judge designated by the presiding judge.

IX.

Wherefore, premises considered, Defendant prays that this motion for recusal be granted and that a disinterested judge be appointed to hear this case.

Respectfully submitted,
/s/Bob Matyastik
312 S. Crockett
Cameron, Texas 76520
817 697 6585

Copy served on the County
Attorney of Milam County, Texas on Nov. 29, 1993 /s/Bob M.